3% per annum, being half the rate of 6% per annum seeing that these items would have been earned or were incurred from month to month from February 1981 (taking into account the fact that second plaintiff had received remuneration up to mid February 1981).

I also award the first plaintiff $500 for pain and suffering for his relatively minor injuries. I will also award costs to the second plaintiff. As for the costs of the first plaintiff, I will hear arguments in chambers.

There will be judgment accordingly.

[*Editorial Note:* On the hearing in chambers the following Rider was included] –

"Mr Chellam: I am not asking for costs for 1st plaintiff. But I ask for costs of the counterclaim.

Court: The counterclaim is dismissed with no order as to costs because the issues were so intertwined that a separate order for costs is unnecessary. Usual consequential orders. Liberty to apply.

Intl: Lai J."

Order accordingly.

Solicitors: *T.U. Naidu & Co; Niru & Co.*

SENGOL v. DE WITT

[A.C.J. (Chan Sek Keong, J.C.) July 31, 1986]

[Singapore – M.C. Appeal No. 44 of 1985]

Family Law – Maintenance – Whether a nominal sum can be paid – Maintenance order – Effect of – Application of 1/3 rule – Women's Charter (Cap. 47), ss. 60, 68 & 102.

The complainant, a police constable, married the respondent/appellant, a flight steward with Singapore Airline Limited (hereinafter called "SIA") on March 14, 1984. After the marriage she applied for and was allocated a Housing Board flat ("HDB flat") under the Police scheme. But the couple, owing to certain differences concerning the renovation of the HDB flat and other matters never resided there. Instead a room was rented from October 1984 at $300 per month in a building in River Valley Road and this was their matrimonial home. The couple began to live apart from December 1984 as they could not reconcile their differences although according to the complainant the respondent only stopped staying with her from April 1985, as from which date the respondent neglected to maintain her.

On August 24, 1985, the Magistrate ordered the respondent to pay to the complainant a monthly sum of $350 as maintenance with effect from June 14, 1985, the date of the filing of the application for maintenance. The respondent appealed. In his appeal, the respondent contended that first the order of the Magistrate was wrong in that the amount of maintenance should be nominal and secondly that the maintenance order should have taken effect from the date when the order was actually made *i.e.* August 24, 1985 and not from the date of the application.

In the course of the appeal, counsel for the complainant produced a letter dated June 13, 1986 from the CPF Board which disclosed that a sum of $11,228.50 had been withdrawn by the complainant to purchase the HDB flat, and that only a balance of $3,987.00 had been paid back to the Central Provident Fund Board for her account after the surrender of the HDB flat. In other words, she had lost $7,241.50. Counsel informed that the complainant had been forced to surrender the HDB flat because she could not afford to complete the purchase or to maintain it due to the separation.

Held, varying the order of the Magistrate: (1) the loss of $7,241.50 was relevant in determining whether the complainant was entitled to maintenance and, if so, how much should be ordered and how it should be paid

(2) here the wife has lost not only the HDB flat which would have been her matrimonial home (but for the separation due to the conduct of the respondent) but also a considerable part of her CPF savings. It was a real loss of an existing financial resource even though it was not available to her for immediate use;

(3) the principle in *Hayes* v. *Hayes*[11] *i.e.* "where there was a very short marriage between two young persons, neither of whom had been adversely affected financially by the consequences of the marriage and each was fully capable of earning his or her own living, the approach which the court should adopt was to allow the party who was in weaker financial position (usually the wife) to adjust herself to her situation and thereafter to achieve a "clean break" facilitated if necessary by a small lump sum" should be applied to this case in favour of the complainant in order to allow her to adjust to the situation;

(4) it was within the power of the Magistrate to make an order with effect from April 1985 rather than June 14, 1985;

(5) the complainant is ordered to be paid $300 per month by the respondent for a period of two years commencing from June 14, 1985 up to June 14, 1987.

Cases referred to:

(1) *Attwood* v. *Attwood* [1968] 3 All E.R. 385.
(2) *Rodewald* v. *Rodewald* [1977] 2 All E.R. 609.
(3) *Slater* v. *Slater* [1982] 3 F.L.R. 364; 12 Fam. Law 153.
(4) *Wachtel* v. *Wachtel* [1973] 1 All E.R. 829.
(5) *Raquiza* v. *Raquiza* [1947] M.L.J. 202.
(6) *Graves* v. *Graves* [1973] 117 Sol. J. 679.
(7) *Khan* v. *Khan* [1980] 1 All E.R. 497.
(8) *Soni* v. *Soni* [1984] F.L.R. 294; 14 Fam. Law 268.

(9) *Frisby* v. *Frisby* (1984) 14 Fam. Law 19.
(10) *Macey* v. *Macey* [1982] 3 F.L.R. 7.
(11) *Hayes* v. *Hayes* (1981) 11 Fam. Law 208.
(12) *Thevathasan* v. *Thevathasan* [1960] M.L.J. 255.

MAGISTRATES' COURT APPEAL.

N.K. Raja for the respondent/appellant.
Ms. Tham Teck Leng for the complainant/respondent.

Cur. Adv. Vult.

Chan Sek Keong J.C. : This is an appeal by the respondent, the husband of the complainant, against the order of the Magistrate made on August 24, 1985 whereby he ordered the respondent to pay to the complainant a monthly sum of $350 as maintenance with effect from June 14, 1985, the date of the filing of the application for maintenance.

The respondent says firstly that the order was wrong in that the amount of maintenance should be nominal and secondly, that the maintenance order should have taken effect from the date when the order was actually made, *i.e.* August 24, 1985, an not from the date of the application.

The facts in this case are as follows. The complainant, a police constable, married the respondent, a flight steward with Singapore Airlines Limited ("SIA"), on March 14, 1984. After the marriage, she applied for and was allocated a Housing Board flat ("HDB flat") under the Police Scheme. But the couple, owing to certain differences and misunderstandings concerning the renovation of the HDB flat and other matters, never resided there. Instead, a room was rented from October 1984 at $300 per month in a building in River Valley Road and this was their matrimonial home. The couple began to live apart from December 1984 as they could not reconcile their differences although according to the complainant, the respondent only stopped staying with her from April 1985, as from which date the respondent neglected to maintain her. The Magistrate found that the respondent had no reason to leave the complainant. She testified that she still loved her husband and wanted to live with him but he was not willing to take her back.

As a police constable, the complainant was earning a gross salary of $998.08 per month and a net salary, after deduction of Central Provident Fund ("CPF") contribution, of $699.08 per month. She claimed that her monthly expenses were: $200 on taxi, $200 on transport, $120 for lunch, $300 for clothing, shoes, cosmetics, etc., $200 for entertainment, and $400 for board and lodging, making a total of $1,620. She asked for $600 per month for maintenance.

The respondent was earning a gross salary of $873 per month, which, after deducting CPF contribution, produced a net sum of $654. As a flight steward, he was entitled to meal allowances whenever he was on flight duty in any international sector of SIA's network. His meal allowances for the period of 6 months prior to the date of the hearing averaged about $1,300 per month (although a letter dated August 7, 1985 from SIA and admitted in evidence stated that the average was $1,500 per month), of which 70% thereof would normally (but not necessarily so as a lower figure was permissible) be utilised, thus leaving 30% thereof which was receivable in cash. His monthly expenses were: $120 on taxi; $80 for other transport; $300 to his mother; $50 on clothing; $60 to dry clean his uniform and $150 to $200 for outings, making a total of $760 to $810.

The Magistrate found, quite correctly, that the expenses of the complainant were too high in respect of transport, entertainment and also that there was no proof of the $400 payment for board and lodging.

On the above facts, the Magistrate ordered maintenance of $350 per month with effect from June 14, 1985.

Before me, the respondent's counsel conceded that the respondent's conduct amounted to wilful neglect to maintain his wife but contended that maintenance of $350 per month was manifestly excessive as the wife's salary was more than sufficient for her needs. There was no change in her standard of living before and after separation. As far as board and lodging were concerned, he said that there was no evidence of the complainant having to rent a flat, but although he submitted that $400 per month for board and lodging was too high, he was prepared to accept a figure of $300 per month as reasonable, this being the amount the complainant was paying to her mother for food and lodging prior to her marriage. Her other needs *e.g.* entertainment, transport, food and other miscellaneous expenses could be met from her salary.

As regards the meal allowances receivable by the respondent, it was argued that the meal allowance was for subsistence and was not part of the earnings of the respondent as defined in section 68 of the Women's Charter ("the Charter"). That being so, that item should not have been taken into account by the Magistrate for the purpose of determining the total earnings of the respondent. I rejected the relevance of this argument. The definition of earnings in section 68 is enacted for the purpose of *enforcing* maintenance orders; it has nothing to do with section 60 of the Charter relating to the *making* of maintenance orders nor does it cut down the Court's duty to have regard to all the circumstances of the case under 60(4) of the Charter. All circumstances would include taking into account all sources of income and capital of the parties.

The respondent's counsel also argued that the Magistrate's order was also wrong in law because it resulted in the wife having a higher standard of living than the husband as she would be paid more than the husband, *i.e.* $1,049 per month against $694. In support of his argument, he cited the judgment of Sir Jocelyn Simon P. in *Attwood* v. *Attwood*[1] where at page 388 the learned President said: "... neither should the standard of living of the wife be put significantly higher than that of the husband, since so to do would in effect amount to imposing a fine on him for his matrimonial offence, and that is not justified by the modern law..."

Counsel also pointed out that even if the 1/3 rule were used in this case, it would still have resulted in the wife's salary being more than the 1/3 of the combined salaries of the couple. Two computations were presented to the court to demonstrate this fact. However, a third computation, which took into account the whole of the meal allowances of the respondent, showed the complainant was entitled to only $58.94 per month. The computations are as follows:

(a)	Wife's salary of	$ 998.08	
	plus Appellant's salary	$ 873.00	
		$1,871.08 ÷ 3 =	$ 623.69
(b)	Wife's salary of	$ 998.08	
	plus Appellant's salary and 30% of meal allowance	$1,263.00	
		$2,261.08 ÷ 3 =	$ 753.69
(c)	Wife's salary of	$ 998.08	
	plus whole of meal allowance and Appellant's salary	$2,173.00	
		$3,171.98 ÷ 3 =	$1,057.02
			− $ 998.08
			$ 58.94

Counsel referred me to *Rodewald* v. *Rodewald*[2] and *Slater* v. *Slater*[3] on the application of this 1/3 rule. The 1/3 rule can be used as a starting point to determine what maintenance, if any, a wife is entitled to: see Lord Denning M.R. in *Wachtel* v. *Wachtel*[4] at page 839. On the basis of either the first or the second computations, the wife should receive nothing whilst on the third computation, she should receive $58.94 per month from her husband. Can he afford it? The answer appears to be no. His total "income" was $2,173 but his expenses were: $910 (70% meal allowance consumed), $218 (CPF), $760 (personal expenses including payment to mother), $350 (maintenance) = $2,238. Even the application of the 1/3 rule would make him a destitute: see *Raquiza* v. *Raquiza*.[5]

Finally, counsel for the respondent argued that since this was a short childless marriage, or as he put it, a marriage that never took off, there was ample authority to show that only a nominal order should have been made in the circumstances. I was referred to *Graves* v. *Graves*,[6] *Khan* v. *Khan*,[7] *Soni* v. *Soni*,[8] *Frisby* v. *Frisby*[9] where the English courts have consistently held that where separation follows a short, childless marriage between two young persons, and each of whom is fully capable of or is earning his or her own living, a nominal order for maintenance is appropriate.

The English authorities cited by the respondent's counsel are, of course, of great persuasive authority to the Singapore Courts, founded as they are on statutory guidelines which have been re-enacted in sections 60(4) and 102 of the Charter. I will now discuss the effect of these provisions.

Section 60(4) applies to applications for maintenance antecedent to matrimonial proceedings whilst section 102 applies to, *inter alia*, applications for maintenance consequent on matrimonial proceedings. There are twelve specific matters in section 102 which the High Court shall have regard to. Of these twelve, only four have substantially been incorporated into section 60(4), but, section 102(d) which refers to the age of each party to the marriage and the duration of the marriage, was not

specifically included as one of the matters the subordinate court shall have regard to under section 60(4). No argument was addressed to me on whether, because of this, there is any difference in the principles to be applied in making maintenance orders under section 60(4) and section 102. It was assumed by counsel for the respondent that the principle established in *Graves* v. *Graves*[6] was applicable to an application under section 60(4). Notwithstanding the absence of any argument before me, I am inclined to the view that the assumption was correct for two reasons. First, section 60(4) says that the subordinate court shall have regard to the circumstances of the case, as does section 102, and the only difference between the two sections is that section 60(4) contains fewer specific matters to be taken into account. In my view, the use of an all embracing formula "all the circumstances" in both sections indicate that the same principles should govern both sets of proceedings save for paragraph (g) of section 102(1) which is applicable only in divorce proceedings. Secondly, by virtue of section 66 of the Charter, the High Court has the same jurisdiction and powers which belong to one exercisable by any subordinate court in relation to maintenance orders. It is most unlikely that a High Court exercising jurisdiction to make a maintenance order is required to apply different principles according to whether the application is made prior to (section 60(4)) or consequent upon (section 102) matrimonial proceedings: see Wood J. in *Macey* v. *Macey*[10] as to the English position.

On the basis of counsel's submissions on the effect of the application of the 1/3 rule and on *Graves* v. *Graves*[6], I would have to agree that the Magistrate's order was wrong and that the proper order should have been a nominal order, if the facts here are similar to those in *Graves* v. *Graves*[6]. But they are not. In the course of the appeal, counsel for the complainant produced a letter dated June 13, 1986 from the CPF Board which disclosed that a sum of $11,228.50 had been withdrawn by the complainant to purchase the HDB flat, and that only a balance of $3,987.00 had been paid back to the Central Provident Fund Board for her account after the surrender of the HDB flat. In other words, she had lost $7,241.50. Counsel informed me that the complainant had been forced to surrender the HDB flat because she could not afford to complete the purchase or to maintain it due to the separation. Counsel said that this evidence of loss was not available at the hearing for consideration before the Magistrate and asked me to admit it in evidence. She was, however, unable to tell me how I should deal with this piece of evidence or its precise relevance to her client's application. Counsel for the respondent did not challenge this request nor the authenticity of the said letter but submitted that the respondent had also lost the $5,000 which he made as a down-payment to a contractor for the renovation of the HDB flat, which sum had been forfeited when the renovation was abandoned. There is no dispute as to this down-payment as it was referred to in the evidence of the complainant and also that of the respondent. When I pointed out that there was no evidence of forfeiture on record, counsel for the respondent submitted that as he had been taken by surprise by the letter from the Housing And Development Board he should be given an opportunity to call evidence to prove his client's loss.

Counsel also contended that the complainant's loss was irrelevant because it was a loss of CPF contributions and not current income and that it had not affected her present ability to maintain herself.

I do not agree. I am of the view that the loss of $7,241.50 is relevant in determing whether the complainant is entitled to maintenance and, if so, how much should be ordered and how it should be paid. Section 60(4) of the Charter enjoins me to have regard to all the circumstances of the case, and in particular to (a) the financial needs of the wife and (b) to her earning capacity, property and other financial resources. Here the wife has lost not only the HDB flat which would have been her matrimonial home (but for the separation due to the conduct of the respondent) but also a considerable part of her CPF savings. It is a real loss of an existing financial resource even though it is not available to her for immediate use. The complainant should be allowed to replenish this loss and to do that she will need to set aside about $300 for 24 months from her current income. It is not unrealistic to say that if she does set aside $300 per month for the next 24 months in order to make up this loss as part of her savings, her disposable income would be reduced to about $400 per month.

In my view, the application of the principle in *Graves* v. *Graves*[6] to the complainant's case would cause her an injustice. The applicants for maintenance in the *Graves* v. *Graves*[6] line of cases did not suffer any adverse financial consequence as a result of the marriage. The complainant did. In *Hayes* v. *Hayes*,[11] Balcombe J., in a divorce case, said that "where there was a very short marriage between two young persons, neither

of whom had been adversely affected financially by the consequences of the marriage and each was fully capable of earning his or her own living, the approach which the court should adopt was to allow for a short period of periodical payments to allow the party who was in the weaker financial position (usually the wife) to adjust herself to her situation and thereafter to achieve a "clean break" facilitated if necessary by a small lump sum."

I do not consider it necessary to remit this matter to the Magistrate to consider any evidence that may be adduced by the respondent to prove his alleged loss of $5,000. Assuming such loss, I do not think it is right that the complainant should be indirectly penalised for a loss which was caused by the conduct of the respondent.

I am of the view that the principle stated by Balcombe J. in *Hayes* v. *Hayes*[11] should be applied to this case in favour of the complainant in order to allow her to adjust to her situation. I do not believe that the respondent will be rendered destitute by an order for a reduced sum for a limited period of time, notwithstanding the demonstrable effect of his counsel's third computation. The respondent's counsel admitted that the respondent was paid a bonus of 2½ months for 1985 and that he had been given an annual increment of $25. There is evidence on record the meal allowance was averaging $1,300 to $1,500 per month and that the percentage thereof consumed could have been less than 70%.

Furthermore, it is now common knowledge that the employee's monthly contribution for CPF has since April 1, 1986 been reduced by 15% of his salary.

In regard to the effective date of the maintenance order, it was argued that the complainant had suffered no undue hardship during the interim period from June 14, 1985 to August 5, 1985 except for a payment of $650 for outstanding conservancy and PUB charges of which the respondent had reimbursed the complainant of his share amounting to $361. The complainant's evidence on this point, and this was not challenged by the respondent, was that the respondent had failed to maintain her since April 1985. Accordingly, I find that this argument is without merit. It was within the power of the Magistrate to make the order with effect from April 1985 rather than from June 14, 1985: see *Thevathasan* v. *Thevathasan*.[12]

I now have to decide how the Magistrate's order should be varied. As a lump sum order may prove unduly burdensome on the respondent, I have decided that an order for payment to the complainant of $300 per month for a period of two years commencing from June 14, 1985 up to June 14, 1987 should be fair and tolerable to him and also provide reasonable maintenance for the complainant during this period: see *Khan* v. *Khan*.[7] The order of the Magistrate is varied accordingly.

Order accordingly.

Solicitors: *N.K. Raja & Co.; Tan Lee & Choo.*